in the Philippines, and that this said judgment of the Supreme Court of the Philippines may be reversed, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seen just and proper.

MANILA ELECTRIC COMPANY

By

JAMES M. ROSS,

Counsel for Petitioner

BRIEF IN SUPPORT OF PETITION

I.

THE OPINIONS OF THE COURTS BELOW

The opinions of the Philippine Supreme Court (R-49-59) and of the Court of First Instance of the City of Manila (R-30-41) have not been officially reported.

II.

JURISDICTION

Jurisdiction of this Honorable Court is involved under the Act of Congress of February 13, 1925, Chapter 229, Sec. 7 (43 Stat. 940) which provides:

> "Sec. 7. That in any case in the Supreme Court of the Philippine Islands wherein the Constitution, or any statute or treaty of the United States is involved, or wherein the value in controversy exceeds $25,000, or wherein the title or possession of real estate exceeding in value the sum of $25,000 is involved or brought in question, it shall be competent for the Supreme

> Court of the United States, upon the petition of a party aggrieved by the final judgment or decree, to require, by certiorari, that the cause be certified to it for review and determination with the same power and authority, and with like effect, as if the cause had been brought before it on writ of error or appeal; and, except as provided in this section, the judgments and decrees of the Supreme Court of the Philippine Islands shall not be subject to appellate review."

The Court's jurisdiction has been preserved by the Philippine Independence Act (Act of March 24, 1934, ch. 84, 48 Stat. 456, 48 U. S. C. A. Par. 1231 et seq.), which provides (in sub-division 6 of Par. 7 thereof, 48 Stat. 462, 48 U. S. C. A. Par. 1237) that:

> "Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law; and such review shall also extend to all cases involving the constitution of the Commonwealth of the Philippine Islands. (Jan. 17, 1933, c. 11, Par. 7, 47 Stat. 765; March 24, 1934, c. 84, Par. 7, 48 Stat. 460)"

The above provision of the Philippine Independence Act was incorporated in the Constitution of the Philippines as Sec. 1, Par. 13 of the Ordinance appended to the Constitution.

This case involves interpretation of Art. III,

Sec. 1, Par. 1, of the Constitution of the Philippines which provides:

> "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

The decision of the Philippine Supreme Court herein was rendered on November 1, 1939 (R-49-59). Final Judgment was entered on December 23, 1939, (R-70). Exception and Notice of Intention to apply for a Writ of Certiorari to the Supreme Court of the United States was filed on March 16, 1940. (R-71).

STATEMENT OF THE CASE

A full statement appears in the petition. In the interest of brevity, it is not repeated here.

SPECIFICATION OF ERRORS

The Supreme Court of the Philippines erred:

1. In holding that section 192 of Act No. 2427, as amended, insofar as it authorized respondent to levy a tax on premiums paid to the City of New York Insurance Co. and the United States Guaranty Insurance Co. in this case, did not contravene the provisions and limitations of section 3 of the Act of Congress of August 29, 1916, and of article III, section 1, paragraph 1 of the Constitution of the Philippines.

2. In holding that the Commonwealth of the Philippines had jurisdiction to impose a tax on insur-

ance premiums paid in the United States to non-resident insurance companies not engaged in business in the Philippines and not entering into contracts or having any agent or representative in the Philippines.

3. In not following the decision of the Supreme Court of the United States, in the case of Compañía General de Tabacos de Filipinas *v.* Collector of Internal Revenue, 275 U. S. 85, 72 L. Ed. 177.

ARGUMENT

Sec. 192 of the Philippine Insurance Law imposes a tax of 1% on premiums paid by insurers resident in the Philippines to insurance companies not engaged in business in the Philippines. In construing this section of Philippine law, this Court has said in the case of Compañía General de Tabacos de Filipinas *vs.* Collector of Internal Revenue, 72 L. Ed. 177, at p. 181:

> "Even though it (the tax imposed by Sec. 192 on premiums paid to foreign insurance companies) is only equal to the tax upon normal premiums paid in the Philippine Islands, it is imposed for the purpose of discouraging insurance in companies that do not pay tribute to the state because out of its taxing or penalizing jurisdiction * * *"

and on page 183:

> "We may properly assume that this tax placed upon the assured must ultimately be

paid by the insurer, and treating its real incidence as such, the question arises * * *"

The insurance contracts in this case were entered into entirely outside of the Philippines by petitioner and insurance companies not licensed to do business in the Philippines and not having any agent or representative in the Philippines. Premiums were paid in New York and losses would be paid there. The tax is thus clearly invalid within the principles laid down by this Court in the case of Allgeyer *vs.* State of Louisiana, 41 L. Ed. 832 and subsequently followed by it in St. Louis Cotton Compress Co. *vs.* Arkansas, 67 L. Ed. 297; Provident Savings Assoc. *vs.* Kentucky 60 L. Ed. 167; New York Life Insurance Co. *vs.* Head, 58 L. Ed. 1259; New York Life Insurance Co. *vs* Dodge, 62 L. Ed. 772; Compañía General de Tabacos de Filipinas *vs.* Collector of Internal Revenue, 72 L. Ed. 177; and by various state courts in the cases of Hyatt *vs.* Blackwell Lumber Co., 31 Idaho 540, 173 Pac. 1083, and Vermont *vs.* International Paper Co., 96 Vt. 506, 120 A. 900.

The Philippine Supreme Court upheld the tax, however, basing its decision upon the following grounds which petitioner will briefly consider:

(1) That petitioner, the insurer, was within Philippine jurisdiction.

This argument was answered by this Court in the Tabacalera case where it said:

> "The taxpayer, however, is resident in the Philippine Islands and within the governmental jurisdiction of those Islands. Its property in the Islands and its agents doing business there are within the reach of the government of the Islands. The Company may be compelled to pay what the government in its quasi sovereignty chooses to exact as a matter of power, unless restrained by law. A legal restriction upon the taxing power of the Philippine government over citizens and residents of the Islands is found in the liberty secured by the Organic Act which embraces the right to make contracts and accumulate property and do business outside of the Philippine Islands and beyond its jurisdiction without prohibition, regulation or governmental exaction."
>
> Compañia General de Tabacos de Filipinas *vs.* Collector of Internal Revenue, 72 L. Ed. 177, at p. 180.

If jurisdiction over the insured could legalize the tax, the decision of this Court and of the various state courts who have passed upon the point (see citations on p. 15) must be reversed, for in all of those cases, the insured was subject to the taxing jurisdiction.

(2) That the property insured was within the Philippines and was protected by Philippine law.

But the tax is not placed upon the property, for as this Court said in the Tabacalera case (L. Ed. p. 182) "The tax here is not upon the property insured. It is upon the contract or its proceeds. . . ."

Nor is the fact that the property was protected by Philippine Law a proper basis for imposition of a tax on insurance placed thereon outside of the state, for again as this Court said in the Tabacalera case:

> "It is true that in considering the question of the measure of the tax, this Court referred to the argument of the supreme court of Pennsylvania that the tax might be properly measured by New York contracts because Pennsylvania protected the individuals insured therein during their lives in Pennsylvania.... But such reference cannot be made a basis for an argument that such protection as the government of the Philippine Islands gave to the merchandise while being shipped at Manila furnished any jurisdiction for a tax by that Government on the premiums paid in Barcelona upon the insurance contract. If that were to be admitted, then neither the Allgeyer nor the St. Louis Cotton Compress Co. Case could be sustained, for the property in each of those cases was protected by the government seeking to impose the forbidden exactions upon the owner who obtained the insurance out of the state on that property within it."
>
> Compañia General de Tabacos de Filipinas *vs.* Collector of Internal Revenue, 72 L. Ed. 177 at p. 182.

It is true that in the principal case the property remained in the Philippines during the entire life of the insurance contract, while in the Tabacalera case, it was there only a portion of the time, but in determining jurisdiction or power to impose a tax, the length of time the property was within the state would appear immaterial. Also in the Hyatt *vs.* Blackwell Lumber Co., 31 Idaho 540, and Vermont *vs.* International Paper Co., 96 Vt. 506, cases, the property was permanently situated within the states seeking to impose the taxes and yet the respective state supreme courts held the taxes invalid.

(3) That the insurance contracts contained provisions by virtue of which the foreign insurance companies had the right to send agents into the Philippines in connection with the adjustment of losses.

The insurance contracts contained the usual clauses relating to proof of loss and authorizing the insurance company to take possession of the insured property in event of claim of loss. They also provided that in event the parties arbitrated the question of the valuation of the property or claim of loss and the arbitrators were unable to select an umpire, the umpire should be selected by "a judge of a court of record in the state in which the property insured is located".

The Philippine Supreme Court in its decision stated that, because the parties had agreed between themselves that the insurer might enter the Philippines

under the above conditions, the insurer was doing business in the Philippines. The court in its decision said:

> "The New York Insurance Company and the United States Guaranty Company may be said to be doing business in the Philippines because the insurance policies issued by them cover risks on properties within the Philippines which may require adjustment and the activities of agents in the Philippines with respect to the settlement of losses arising thereunder."

The court cited Equitable Life Assurance Society *vs.* Pennsylvania, 238 U. S. 143; 59 L. Ed. 1239, 23 Sup. Ct. 829, and the second part of the decision of Compañia General de Tabacos de Filipinas *vs.* Collector of Internal Revenue, 275 U. S. 87, 72 L. Ed. 177, in support of its statement. But neither of these cases is in point. In the Equitable case, the insurance company was actually engaged in business in Pennsylvania. As this court said (L. Ed. p. 182) "the tax was a tax on a privilege actually used, the only question concerned the mode of measuring the tax." The insurance company had actually sent agents and adjusters into the state and had paid dividends there. The London Insurance Company, in the second part of the Tabacalera case, was actually licensed to do business in the Philippines and this Court presumed the com-

pany would avail itself of its license in carrying out its contract obligations.

But in the case here before this Court, the insurance companies are not licensed to engage in business in the Philippines and they have not sent any agents or representatives into the Philippines. At most, there is a possibility that they will do so, and petitioner submits such a mere possibility does not constitute engaging in business in the Philippines or subject non-resident foreign insurance companies to Philippine taxes.

Manila, Philippines, May 15, 1940.

Respectfully submitted,

JAMES M. ROSS
Attorney for Petitioner
414 National City Bank Bldg.,
Manila, Philippines